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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,569

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Pawel Musial

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

CHAKOUR, ISSAM

ART UNIT

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2617

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,569	Applicant(s) MUSIAL, PAWEL	
	Examiner ISSAM CHAKOUR	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the appeal brief filed on 06/05/2009.

In view of the Remarks and the Appeal brief filed on 06/05/2009, PROSECUTION IS HEREBY REOPENED. Reasons for reopening are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Rafael Pérez-Gutiérrez/

Supervisory Patent Examiner, Art Unit 2617

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 2, 10, 11, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huard et al (Huard, USPPA 2004/0259630) in view of Meade (US Patent 7,206,559 B2).

4. Consider claims 1 and 19, Huard discloses a method for providing user data pertaining to a user of a mobile terminal (e.g., locator, which can be a handheld device, see [0017] lines 8-11) to a recommender system (e.g. selector, see [0021] lines 2-3) , the method comprising the steps of:

determining, by the terminal, a current location of the terminal (See [0017] lines 5-6) wherein said current location is determined after receiving a initiating signal, said initiating signal being one of a user input (e.g., entering location information or activation) and a received signal (See [0017] lines 12-14 and 18-19) ;

saving, in the terminal, an identifier of the determined location based on a longevity (See [0020], lines 4-6) of said terminal in an area proximate said current location (Since the steps in Huard include a monitoring element “activity monitor” that uses location information from the locator and timing the information against a timer value, these steps entail storing the location, and since the location has an ID, this means that location is to be identified and distinguished for

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processing and storage, see [0018] lines 3-6); and

informing, by means of the terminal, said recommender system of the determined location (See claims 36 and 37).

Huard fails to explicitly teach that the recommender being a system of an actual consumer device. However, Meade teaches the mobile being used to apply and update user preferences in appliances and consumer devices such as DVR, PVR, or TIVO (See column 8, lines 51-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's invention with the feature taught by Meade in order to receive user preferences, suggestions, or rewards in devices such consumer electronic devices such recommended programs or TV purchases.

5. Consider claim 10, Huard discloses a mobile terminal for providing user data pertaining to a user of said terminal (e.g., locator, which can be a handheld device, see [0017] lines 8-11) to a recommender system (e.g., selector, see [0021] lines 2-3), the apparatus comprising:

a memory (Since the steps in Huard include a monitoring element "activity monitor" that uses location information from the locator and timing the information against a timer value, these steps entail storing the location, and since the location has an ID, this means that location is to be identified and distinguished for processing and storage, see [0018] lines 3-6);

a transmitter (See [0017] lines 12-13);

a receiver configured for receiving a wireless signal (See [0018] lines 3-4); and

a processor for:

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determining, a current location of the terminal (See [0017] lines 5-6), wherein said current location is determined after receiving a initiating signal, said initiating signal being one of a user input (e.g., entering location information or activation) and a received signal (See [0017] lines 12-14 and 18-19) ;

saving an identifier of the determined location (See [0018] lines 3-6) to said memory based on a longevity of said terminal in an area proximate said current location (See [0020], lines 4-6); and informing, by means of said transmitter, said recommender system of the determined location (See claims 36 and 37).

.Huard fails to explicitly teach that the recommender being a system of an actual consumer device. However, Meade teaches the mobile being used to apply and update user preferences in appliances and consumer devices such as DVR, PVR, or TIVO (See column 8, lines 51-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Huard's invention with the feature taught by Meade in order to receive user preferences, suggestions, or rewards in devices such consumer electronic devices such recommended programs or TV purchases.

6. Consider claims 2 and 11, Huard in view of Meade discloses the method and the terminal in accordance with claims 1 and 10 respectively, Huard further teaches the method wherein said terminal further includes has an input device, said input device providing means for providing said initiating signal (e.g., entering location information or activation, see [0017] lines 12-14 and 18-19).

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7. Claims 3-8 and 12-17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Huard in view of Meade as applied to claim 1 and further in view of O'Neil (US 2002/0107027).

8. Consider claims 3 and 12. Huard in view of Meade teaches the method and the terminal in accordance with claims 1 and 10 respectively. Huard in view of Meade fails to explicitly teach the method wherein said received signal causes said terminal to execute the steps of: recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and

if it is recognized that the terminal is outside the home territory, automatically and without intervention by the user other than moving the terminal to a different location, initiating a timer for starting a first predetermined time period.

Nonetheless, O'Neil discloses a method wherein said received signal causes said terminal to execute the steps of:

recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and if it is recognized that the terminal is outside the home territory (inherent in roaming cellular phones), automatically and without intervention by the user other than moving the terminal to a different location (See claim 2 and 3).

initiating a timer for starting a first predetermined time period (See [0039], lines 22-23. Note that timer is indispensable in application where counting the duration, delaying, or measuring time is required).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement the system taught by Huard in view of Meade with an automatic start of

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timer to record the presence of the user at a location other than his/her home location, because in Huard's invention, the location information is to be entered or the user enables the entry of the location, but only if the user stays at that location for a given time would the system validate that the user is effectively is at a location different from his/her home location, otherwise the user is passing by, roaming, or not staying there for long, which may not necessarily be of interest to the user.

9. Regarding claims 4 and 13, Huard in view of Meade and O'Neil teach the method and the terminal according to claims 3 and 12 respectively. Huard as mentioned above teaches the current location determined in the determining step changes in corresponding with the movement of the terminal (See [0027], note that location can include a wider region location information not just inside a particular confined area). O'Neil further teaches that the current location determined in the determining step changes in correspondence with movement of the terminal, said current location comprising at any moment a region and a sub-region within the region (See abstract), the region and sub-region (an example of the region is particular shopping mall, wherein the sub-regions are local stores within that mall, see [0028], line 7) being discernible by the terminal from the signal, the starting step further comprising the step of monitoring said signal to determine whether at least one of the region and the sub-region stays constant over said first predetermined time period (See [0042], lines 4-6).

It would have been obvious to use O'Neil timing scheme because one of ordinary skill in the art at the time of the invention would have had a good reason to pursue the idea of timing the location of the user in a particular region as it would have been within his/her technical grasp. In

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another word, after determining the location of the user, before recommending any program, rewarding a prize, or considering the location as one of interest to the user, there must be a time interval to test if the user is effectively in an area long enough and he/she is not just passing by or roaming the area shortly.

10. Regarding claims 5, 8, 14, and 17. Huard in view of Meade and O'Neil teaches the method and the terminal in accordance with claims 4 and 13 respectively. Huard in view of Meade and O'Neil teaches the method wherein the monitoring step comprises the steps of: monitoring said signal to determine whether the region stays constant over said first predetermined time period as mentioned above. Huard in view of Meade and O'Neil does not explicitly teach the step further comprising monitoring said signal to determine whether the sub-region stays constant over a second predetermined time period. However, it would have been obvious to one of ordinary skill in the art at the time of invention to monitor the location of the user in an area that is smaller than the previous one for another predetermined period of time, because part of the recommender's function is to narrow down or further select a particular outcome that is of interest to the user based on the location and the time spent in that location. It would have been obvious to further test if the user for example is still at a certain location in the play area or has moved to different play gallery. Furthermore, the monitoring is obvious to have encompassed testing if the user is at particular gallery or just passing by after shortly checking the game, if the user is there for shorter time than the predetermined time, then the recommender would not transmit or process the location information of said gallery. Similarly, before storing its location as one of interest, the mobile would continuously monitor its location over another

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predetermined period of time to see if the user is at that location or have moved on. Therefore, it would have been obvious to one of ordinary skill in the art to pursue these steps which would have yielded the predictable results as set forth above.

11. As to claims 6 and 15, Huard in view of Meade and O'Neil teaches the method and the terminal as discussed above in accordance with claims 5 and 14 respectively, Huard further teaches the saving step further comprises the step of saving the region as an identifier (See [0018] lines 3-6) and the informing step comprises the step of informing the recommender system of said region (See claims 36 and 37). Huard in view of Meade and O'Neil teaches testing the region to determine if it has stayed constant over a period of time as mentioned above. Although Huard in view of Meade and O'Neil does not explicitly teach the condition that if it is determined that the region has stayed constant over said first predetermined time period, testing for this condition would have been obvious because the purpose of including a monitoring step is to monitor the events by testing whether the timer reached a predetermined amount of time in the same region, if it does without any change of the location of the user, then this region might be of an interest to the user, and saving it for later transfer of this location information to the recommender for selecting a particular prize as in Huard or updating the preferences as in Meade.

12. With regards to claims 7 and 16, Huard in view of Meade and O'Neil teach the method and the terminal as discussed above in accordance with claims 6 and 15 respectively, Huard does not teach the method wherein, if it is determined that both the region and the sub-region have

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stayed constant over the first and second predetermined time periods respectively, the saving step further comprises the step of saving the sub-region as an identifier and the informing step comprises the step of informing the recommender system of said sub-region. However, as mentioned above, the monitoring function not only tests if the user has changed location in a region in a given time, it also has to test for change of location in a much narrower area (sub-region) if the first region is much larger, it would then have been obvious to one of ordinary skill in the art at the time of the invention, to store the location of the sub-region as an identifier because it will allow Huard's system to further narrow down by means of the recommender the selection of particular prizes in that particular sub-region in a gallery having multiple play areas.

13. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huard in view of Meade as applied to claim 1 above, and further in view of Smith (US Patent 6,580,914).

14. Regarding claims 9 and 18, Smith in view of Meade and Kabala teaches the limitation in accordance with claims 1 and 10 respectively. Huard discloses a step that the recommending or selection, or rewarding step may be automatic (See [0046]). Huard does not teach expressly that the determining, saving steps are initiated automatically by the terminal without the intervention by the user other than moving the terminal to a different location and that the informing step is automatically initiated, but by means of a request by user.

However, Smith teaches the method wherein the determining, saving steps are initiated automatically (See column 5, lines 29-30) by the terminal without the intervention by the user other than moving the terminal to a different location. Furthermore, Meade on the other hand

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teaches the informing step is initiated automatically between the mobile device and a recommender (See column 10, lines 34-42). Note that making a process automatic as opposed to prompt input and manual initialization is recognized as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one of ordinary skill at the time of the invention was made to add this feature as taught by Smith and Meade to Huard's invention because of the convenience it offers the user.

Response to Arguments

Applicant's arguments, see Appeal Brief on pages 11-14, filed 06/05/2009, with respect to the rejection(s) of claim(s) 1-19 under 103 (a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Huard in view of Meade and Oneil or Huard in view of Meade and Smith.

In the previous rejection Smith in view of Meade taught the recommender system that selectively recommends a particular advertising depending on the location of the mobile and the preferences that pertain to the user, where the mobile transfer said preferences determined based on the location to a consumer electronic system. However, Smith in view of Meade lacked any suggestion regarding the time spend at a particular location then determining that such location might constitute an interest or become a preference to the user and use it in deciding to store the location identification to later recommend such location related information in providing a program. Therefore, there was no motivation to import the feature from Kabala, and one of ordinary skill in the art may not find obvious to modify Smith's invention so to perform in a similar fashion the steps disclosed in the present application. However, in view of the new

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grounds of rejection, Huard discloses a recommending system or selective system of prizes that determines/decides based on the location and the time spent in that location to selectively reward or provide the user with whatever his objectives were by being at that location. Applicant's claimed invention would be very foreseeable from the disclosure of Huard in view of Meade and the extension of its objectives to one of ordinary skill in the art. In another word, Huard's invention discloses the time related feature, the locating feature, as well as the recommending feature in a portable or handheld device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ISSAM CHAKOUR whose telephone number is (571) 270-5889. The examiner can normally be reached on Monday-Thursday (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Perez Rafael can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/I. C./

Examiner, Art Unit 2617

/Rafael Pérez-Gutiérrez/

Supervisory Patent Examiner, Art Unit 2617